



## DEPARTMENT OF LABOR

### Wage and Hour Division

#### Agency Information Collection Activities; Comment Request; Information Collections: The Family and Medical Leave Act of 1993, as Amended

**AGENCY:** Wage and Hour Division, Department of Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (the Department) is soliciting comments concerning a proposed extension of the information collection request titled, “The Family and Medical Leave Act of 1993, as Amended.” This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA). The Department proposes to extend the approval of this existing information collection without change to existing requirements. The PRA program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. A copy of the proposed information request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

**DATES:** Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by Control Number 1235-0003, by either one of the following methods: *E-mail:* WHDPRAComments@dol.gov; *Mail, Hand Delivery, Courier:* Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW, Washington, DC 20210.

*Instructions:* Please submit one copy of your comments by only one method. All submissions

received must include the agency name and Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via e-mail or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for Office of Management and Budget (OMB) approval of the information collection request.

**FOR FURTHER INFORMATION CONTACT:** Amy DeBisschop, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693-0406 (this is not a toll-free number). Alternative formats are available upon request by calling 1-866-487-9243. If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

**SUPPLEMENTARY INFORMATION:**

*I. Background:* The Family and Medical Leave Act of 1993 (FMLA), 29 U.S.C. 2601, and its regulations at 29 CFR part 825 require private sector employers that employ 50 or more employees, all public and private elementary schools, and all public agencies to provide up to 12 weeks of unpaid, job-protected leave during any 12-month period to eligible employees for certain family and medical reasons. Qualifying reasons for leave include birth of a child and to bond with the newborn child; placement with the employee of a child for adoption or foster care; to care for the employee's spouse, child, or parent who has a serious health condition; a serious health condition that makes the employee unable to perform the functions of the employee's job; qualifying exigencies arising out of the deployment of the employee's spouse, son, daughter, or parent to covered active duty in the military, and up to 26 weeks of unpaid, job protected leave during a single 12-month period to care for a covered current servicemember or veteran with a serious injury or illness who is the spouse, son, daughter, parent, or next of kin to the employee.

The Wage Hour Division (WHD) created optional use forms for this information collection. The General Notice (WHD Publication 1420) provides information needed to allow employers to satisfy the general notice requirement. See 825.300(a). The Certification of Health Care Provider for Employee's Serious Health Condition (Form WH-380-E) allows an employee requesting FMLA leave for their own serious health condition to satisfy the statutory requirement to furnish, upon the employer's request, appropriate certification (including a second or third opinion and recertification) to support the need for leave for the employee's own serious health condition. See 825.305(a). The Certification of Health Care Provider for Family Member's Serious Health Condition (Form WH-380-F) allows an employee requesting FMLA leave for a qualifying family member's serious health condition to satisfy the statutory requirement to furnish, upon the employer's request, appropriate certification (including a second or third opinion and recertification) to support the need for leave for the family member's serious health condition. See 825.305(a). Notice of Eligibility & Rights and Responsibilities (Form WH-381) allows an employer to satisfy the regulatory requirement to provide an employee who potentially qualifies to take FMLA leave with a notice of whether the employee is eligible as defined in 825.110, and written notice detailing specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations. See 825.300(b) and (c). Designation Notice (Form WH-382) provides a format an employer may use to meet its obligation to designate leave as FMLA leave. See 825.301(a). Certification of Military Family Leave for Qualifying Exigency (Form WH-384) allows an employee requesting FMLA leave based on a qualifying exigency to satisfy the statutory requirement to furnish, upon the employer's request, appropriate certification to support leave for a qualifying exigency. See 825.309. Certification for Serious Injury or Illness of a Current Servicemember for Military Caregiver Leave (Form WH-385) allows an employee requesting FMLA leave based on an active duty covered servicemember's serious injury or illness to satisfy the statutory requirement to furnish, upon the employer's request, a medical certification from an authorized health care

provider. See 825.310. Finally, Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave (Form WH-385-V) allows an employee requesting leave based on a veteran's serious injury or illness to satisfy the statutory requirement to furnish, upon the employer's request, a medical certification from an authorized health care provider. See 825.310.

II. *Review Focus*: The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Enhance the quality, utility, and clarity of the information to be collected;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; and
- Provide information that could help minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. *Current Actions*: The Department of Labor seeks an approval for the extension of this information collection to ensure effective administration of the Family and Medical Leave Act of 1993, as Amended.

*Type of Review*: Extension.

*Agency*: Wage and Hour Division.

*Title*: The Family and Medical Leave Act of 1993, as Amended.

*OMB Control Number*: 1235-0003.

*Agency Numbers*: Forms WH-380-E, WH-380-F, WH-381, WH-382, WH-384, WH-385, WH-385-V.

*Affected Public:* Private sector, business or other for-profit, not-for-profit institutions;

State, local, or Tribal Governments; Federal Government.

*Total Respondents:* 19,059,432.

*Total Annual Responses:* 73,433,351.

*Estimated Total Burden Hours:* 9,907,359.

*Estimated Time per Response:* Varies with type of request (1.25-20 minutes).

*Frequency:* On occasion.

*Total Burden Cost:* \$480,705,058.68.

*Total Burden Cost (Operations/Maintenance):* \$269,181,387.

DATED: November 1, 2022.

Amy DeBisschop,

Director,

Division of Regulations, Legislation, and Interpretation.

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